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Attorneys for Defendant
TD Bank USA, N.A.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Janelle M. Gephart,

Plaintiff,

v.

TD Bank USA, N.A.; et al.,

Defendants.

No. 2:22-cv-01652-SMM

**DEFENDANT TD BANK USA, N.A.'S
OBJECTION TO PROPOSED ORDER ON
STIPULATION OF DISMISSAL**

On October 2, 2023, Ms. Gephart filed a request for a voluntary dismissal under Rule 41(a)(2), but only on condition that “each party . . . bear their own costs and fees.” (ECF Doc. 34.) On October 3, Defendant TD Bank USA, N.A., filed a response in

1 opposition to that conditional motion. (ECF Doc. 35.) TD’s response stated that “TD does
2 not oppose the dismissal with prejudice — it opposes only the condition in Ms. Gephart’s
3 request that would preclude TD from seeking costs and fees.” (*Id.* at 2.)
4

5 Today, October 5, Ms. Gephart filed a Stipulation of Dismissal with Prejudice,
6 which does not mention fees or costs. (ECF Doc. 36.) TD has no objection to the
7 stipulation itself, which is a form that TD’s attorney had proposed to Ms. Gephart’s
8 attorneys in September, which they rejected at the time. But the stipulation attaches a
9 proposed order, which provides that “[e]ach party shall bear its own costs and attorney
10 fees.” (ECF Doc. 36-1.) The stipulation itself contains no such language, nor would TD
11 have agreed to any such language; in fact, TD’s attorney proposed the stipulation that Ms.
12 Gephart filed today for the express purpose of removing that language from a stipulation
13 that Ms. Gephart’s attorneys had proposed. TD’s attorneys had not seen the proposed order
14 before it was filed.
15

16
17 TD therefore objects to the language in the proposed order that “[e]ach party shall
18 bear its own costs and attorney fees,” for the reasons stated in Defendant TD Bank USA,
19 N.A.’s Memorandum in Opposition to Plaintiff’s Conditional Motion for Dismissal (ECF
20 Doc. 35).
21

22
23 October 5, 2023.

BARNES & THORNBURG LLP

/s/ Brian Melendez

26 Brian Melendez
27 Attorney for Defendant
28 TD Bank USA, N.A.